

The Honorable Paula Casey

☐ EXPEDITE (if filing within 5 court days of hearing)

☒ Hearing is set:

Date: Friday, September 5, 2003

Time: 10:30 a.m.

Judge/Calendar: Honorable Paula Casey

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH
03 SEP -5 PM 1:12
BETTY A. GOULD, CLERK
BY
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

PREMERA, a Washington non-profit
miscellaneous corporation; and
PREMERA BLUE CROSS, a Washington
non-profit corporation,

Petitioners,

v.

MIKE KREIDLER, Insurance
Commissioner for the State of
Washington,

Respondent.

No. 03-2-00112-8

~~[PROPOSED]~~ ORDER

THIS Matter came before the Court on the Petition for Judicial Review filed by
PREMERA and Premera Blue Cross (collectively, "Premera") under chapter 34.05 RCW
with respect to an Order of the Insurance Commissioner of the State of Washington (the
"Commissioner"). Having considered the record in this matter; Premera's Petition,
Opening Brief, and supporting papers; the Commissioner's Response Brief and supporting
papers; Premera's Reply Brief, *Commissioners Supplemental Brief and Proposed Order* and the oral argument presented by counsel for the parties,

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1 the Court enters its findings and conclusions, grants declaratory relief, and remands this
2 matter to the Commissioner as follows:

3 **I. FINDINGS AND CONCLUSIONS**

4 **Premera's Form A Statement**

5 1. On May 30, 2002, Premera advised the Office of the Insurance
6 Commissioner ("OIC") of its intent to reorganize Premera Blue Cross and certain of its
7 affiliates from Washington non-profit corporations to for-profit corporations. On
8 September 17, 2002, Premera filed a "Statement Regarding the Acquisition of Control of a
9 Domestic Health Carrier and Domestic Insurer" ("Form A Statement"), the formal
10 application required for approval of the reorganization. Premera supplemented the Form
11 A Statement on September 27, 2002 and October 25, 2002.

12 2. The OIC administrative proceeding on Premera's Form A Statement is
13 entitled *In the Matter of the Application regarding the Conversion and Acquisition of*
14 *Control of Premera Blue Cross and its Affiliates*, Office of the Insurance Commissioner,
15 Docket No. G02-45.

16 **Statutes And Regulations Governing Form A Statements**

17 3. Review and approval of the Form A Statement is governed by the criteria
18 set forth in the Insurer Holding Company Act, chapter 48.31B RCW (the "Insurer Act")
19 and the Holding Company Act for Health Care Service Contractors and Health
20 Maintenance Organizations, chapter 48.31C RCW (the "Health Care Service Contractors
21 Act") (collectively, the "Holding Company Acts").

22 4. The Holding Company Acts set forth in detail the information that must be
23 provided in a Form A Statement. RCW 48.31B.015(2)(a)-(l); RCW 48.31C.030(2)(a)-(l).
24 The OIC regulations implementing the Holding Company Acts also require that an
25

1 applicant "shall provide the required information on Form A, hereby made a part of this
2 regulation." WAC 284-18A-350. *See also* WAC 284-18-300. The OIC rules specify the
3 format and detail the contents of the Form A Statement. WAC 284-18A-910; WAC 284-
4 18-910.

5 5. In addition to setting forth the required content of a Form A Statement, the
6 Holding Company Acts establish criteria for evaluating a proposed transaction. RCW
7 48.31B.015(4)(a); RCW 48.31C.030(5)(a).

8 6. The Holding Company Acts permit the Commissioner to conduct an
9 investigation, order production of books and records, and retain experts to assist in his
10 review and investigation of the proposed transaction detailed in a Form A Statement.
11 RCW 48.31B.015(4)(c); RCW 48.31C.040(4)(b); RCW 48.31C.070. *See also* RCW
12 34.05.446; WAC 10-08-120.

13 7. The Holding Company Acts require the Commissioner to decide whether to
14 "approve [the transaction] within sixty days after he or she declares the [Form A
15 Statement] to be complete" RCW 48.31B.015(4)(b); RCW 48.31C.030(4).

16 8. In addition, the Health Care Service Contractors Act provides in part:

17 Unless the commissioner declares the [Form A Statement] to be
18 incomplete and requests additional information, the statement is deemed
19 complete sixty days after receipt of the statement by the commissioner. If
20 the commissioner declares the statement to be incomplete and requests
21 additional information, the sixty-day time period in which the statement is
22 deemed complete shall be tolled until fifteen days after receipt by the
23 commissioner of the additional information.

24 RCW 48.31C.030(4).

25 9. If a Form A Statement is declared incomplete, the Health Care Service
Contractors Act requires that "the commissioner shall promptly notify the person filing

1 the statement of the filing deficiencies and shall set forth with specificity the additional
2 information required to make the filing complete.” RCW 48.31C.030(4).

3 10. A hearing must be held on a Form A Statement under RCW 48.31B.015(4)
4 and, if requested, under RCW 48.31C.030(4). Under Washington law, the record of an
5 adjudicative proceeding consists of all evidence, the hearing and its transcript, and other
6 submissions to the agency. RCW 34.05.476; *see also* WAC chapter 10-08.

7 **The Commissioner’s Orders**

8 11. The Commissioner entered his First Order: Case Management Order (“First
9 Order”) on October 24, 2002. In his First Order, the Commissioner announced that an
10 adjudicative hearing would be held as part of the OIC’s consideration of the
11 reorganization described in Premera’s Form A Statement. First Order at 2.

12 12. The First Order provided that Premera’s Form A Statement “will not be
13 considered complete until the adjudicative hearing has concluded and the administrative
14 record is closed.” First Order at 2.

15 13. Premera timely sought reconsideration by the Commissioner of the First
16 Order. *See* Premera’s Motion for Partial Reconsideration and Clarification of the First
17 Order: Case Management Order.

18 14. The Commissioner’s Third Order: Ruling On Premera’s Objections To The
19 Case Management Order in (“Third Order”) was entered on December 23, 2002. The
20 Third Order denied Premera’s motion for reconsideration of the First Order.

21 15. The Third Order declared that Premera’s Form A Statement was not
22 complete. Third Order at 6. The Third Order incorporated the Commissioner’s earlier
23 holding that the Form A Statement will not be considered complete until the adjudicative
24 hearing has concluded and the administrative record has closed.

25 15a. In the Third Order the Commissioner announced
that the Form A Statement was incomplete because OIC
data requests had not been fully complied with.
No specifics were identified in the Order.

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1 16. The Third Order concludes that Premera's Form A Statement will not be
2 considered complete until the Commissioner is "satisfied that Prremera has supplied all
3 the information needed to address the statutory considerations." Third Order at 6.

4 17. The Third Order states:

5 I specifically want Premera to further explain the nature and effects of
6 its proposed transaction in light of any questions or problems raised by
7 the OIC Staff and its experts. I will consider such responsive reports
as further supplementing Premera's [Form A] Statement.

8 Third Order at 7 (emphasis added).

9 18. The Third Order concludes that the 60-day timeframe set forth in
10 the Holding Company Act for the Commissioner to make a decision on the Form
11 A Statement is "directory and permissive," not a "mandatory requirement." Third
12 Order at 9.

13 19. Premera timely sought review by this Court of the Commissioner's
14 Third Order.

15 Jurisdiction

16 20. This Court has jurisdiction over Premera's Petition for Judicial Review
17 pursuant to chapter 34.05 RCW. The Third Order finally determines and impairs
18 Premera's legal right to a prompt determination on its Form A Statement, and the effects
19 of the Third Order are final with respect to the timing of the decision on Premera's Form
20 A Statement.

21 Errors of Law in the Commissioner's Orders

22 21. The Third Order erroneously confuses the prescribed contents of the Form
23 A Statement with other information the Commissioner may need to make his decision.

24 The contents of a Form A Statement are defined by statutes and regulations. The

*The Commissioner has
authority to
declare whether
a Form A
statement is
complete.*

1 completeness of a Form A Statement is to be judged solely by its conformity with those
2 sections of the Holding Company Acts and implementing regulations that define the
3 requirements for a complete Form A Statement. *See* RCW 48.31B.015(2)(a)-(l); RCW
4 48.31C.030(2)(a)-(l); WAC 284-18A-350; WAC 284-18A-910.

5 22. The Third Order improperly predicates completion of the Form A
6 Statement upon resolution of "questions or problems raised by the OIC Staff and its
7 experts." Third Order at 7. A complete Form A Statement does not include information
8 adduced during the agency's discovery, investigation, and examination related to the
9 application. Data requests or discovery by the OIC and its consultants in connection with
10 their review and examination of Premera's Form A Statement do not constitute part of the
11 Form A filing.

12 23. The Third Order erroneously adopts the conclusion in the First Order that
13 the Form A Statement will not be considered "complete until the adjudicative hearing has
14 concluded and the administrative record has closed." First Order at 2. A complete Form
15 A Statement does not include the administrative record. The law makes a clear distinction
16 between the administrative record of the Commissioner's deliberations on whether to
17 approve the transaction detailed in a Form A Statement (e.g., information elicited during
18 an administrative hearing) and the contents of the Form A filing itself.

19 24. The Third Order erroneously adopts the conclusion that the 60-day period
20 for decision begins to run after the adjudicative hearing has been completed. The Holding
21 Company Acts require the agency to complete the review process, including any hearing,
22 and reach a decision on whether to approve the Form A Statement within 60 days after the
23 Form A Statement is complete. RCW 48.31B.015(4)(b); RCW 48.31C.030(4). The 60-
24
25

1 day decision deadline prescribed by the Holding Company Acts runs from the
2 completeness of the Form A, not from the end of the adjudicative hearing.

3 25. The Third Order is erroneous as a matter of law in stating that the 60-day
4 timeframes set forth in the Holding Company Acts are "directory and permissive." The
5 Holding Company Acts' language is ^{clear.} ~~mandatory, and~~ The agency must comply with the
6 statutory deadlines. The agency has no authority to interpret the plain language of the
7 Holding Company Acts in a manner that alters or amends the statute.

8 26. The Third Order fails to comply with the statutory requirement that the
9 Commissioner must promptly notify the person filing a Form A Statement of any
10 deficiencies in the Form A Statement and indicate with specificity what additional
11 information is required to make the filing complete. The Commissioner's declaration in
12 the Third Order that the Form A Statement is incomplete ^{does not provide sufficient}
13 ~~is insufficient and invalid as a~~
14 ~~matter of law.~~ ^{specificity to meet the requirements of RCW 48.31C.030(4).}

15 II. DECLARATORY RELIEF

16 Pursuant to the Court's authority under RCW 34.05.574 to grant declaratory relief
17 on a petition for review of agency action brought under RCW 34.05.570, the Court
18 declares that:

- 19 1. The Holding Company Acts require a decision by the Commissioner within
20 60 days after the Form A Statement is complete.
- 21 2. The Third Order erroneously interprets and applies the Holding Company
22 Acts for the reasons set forth in paragraphs 21-26 above.
- 23 3. The Third Order ignores explicit statutory provisions that define the content
24 of a Form A Statement and imposes additional requirements that are both open-ended and
25 indeterminate. The Third Order fails to identify deficiencies in the Form A Statement

1 with sufficient specificity. ~~The Third Order undermines the legislative mandate for a~~
2 ~~decision within 60 days after the Form A Statement is complete.~~

3 4. By failing to inform Premera "with specificity" what information is needed
4 to complete the Form A Statement, the Third Order unlawfully resulted in an endless loop
5 of questions and requests to Premera. When the Commissioner issues a declaration of
6 incompleteness and requests additional information, subsequent notices of filing
7 deficiencies (if any) must be limited to the applicant's failure to satisfy deficiencies
8 identified in the initial declaration. The Commissioner may not raise new filing
9 deficiencies in subsequent notices. Any other interpretation would render the statutory
10 tolling provisions meaningless.

11 5. Under the Health Care Service Contractors Act, the Form A Statement is
12 "deemed complete" 60 days after receipt unless the Commissioner declares the statement
13 to be incomplete, in which case the Commissioner must "promptly notify the person filing
14 the statement of the filing deficiencies and shall set forth with specificity the additional
15 information required to make the filing complete." RCW 48.31C.030(4). Because the
16 Commissioner failed to meet the statutory requirements for a valid declaration of
17 incompleteness, the Form A Statement is deemed complete as a matter of law.

18 6. By interpreting the Holding Company Act in a manner that ignores the
19 standards for judging the Form A Statement "complete" and that defeats the statutory 60-
20 day deadline for a decision on the statement, the agency has acted outside the scope of its
21 delegated authority.

22 7. Premera is aggrieved and adversely affected by the Third Order because (a)
23 the agency interpretation of the law ignores the statutory and regulatory criteria for
24 determining whether Premera's Form A Statement is complete and jeopardizes Premera's
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1 statutory right to an administrative decision within 60 days; (b) Premera's interests are
2 among those the agency is required to consider in taking action; (c) Premera is prejudiced
3 by the Third Order because the proposed reorganization is time-sensitive and because
4 Premera has been exposed to monetary harm, including the expenses related to payments
5 to consultants engaged by the agency under RCW 48.31B.015(4)(c) and RCW
6 48.31C.030(5)(b); and (d) a judgment in favor of Premera is necessary to redress that
7 prejudice. See RCW 34.05.530.

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9 **III. REMAND TO AGENCY WITH INSTRUCTIONS**

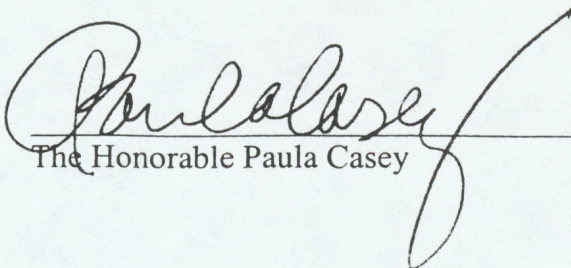
10 Pursuant to the Court's authority under RCW 34.05.574 to order an agency to take
11 action required by law upon a petition for review of agency action, this matter is
12 remanded to the Commissioner with instructions to issue a decision pursuant to RCW
13 48.31C.030 and RCW 48.31B.015 within 60 days of September 5, 2003, unless Premera

14 agrees to a later date for the issuance of the Commissioner's decision, unless no later than
15 Sept. 10, 2003, the Commissioner identifies with specificity those deficiencies in the Form A
16 **IV. CONTINUING JURISDICTION** statement that were identified

17 The Court will retain jurisdiction of this matter until the Commissioner has issued prior to
18 his decision on Premera's Form A Statement. NOV 26 2002 that still remain outstanding

19 **IT IS SO ORDERED.**

20 ENTERED this 5th day of September, 2003.

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23 
24 The Honorable Paula Casey
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1 Presented by:

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3
4 By

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